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SENATE

{ REPORT
109-239

TRAIL OF TEARS NATIONAL HISTORIC TRAIL

APRIL 20, 2006.—Ordered to be printed

Filed, under authority of the Senate of April 7, 2006

Mr. DOMENICI, from the Committee on Energy and Natural
Resources, submitted the following

R E P O R T

[To accompany S. 1970]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1970) to amend the National Trails System Act to update the feasibility and suitability study originally prepared for the Trail of Tears National Historic Trail and provide for the inclusion of new trail segments, land components and campgrounds associated with that trail, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. REVISION OF FEASIBILITY AND SUITABILITY STUDY OF TRAIL OF TEARS NATIONAL HISTORIC TRAIL.

Section 5(a)(16) of the National Trails System Act (16 U.S.C. 1244(a)(16)) is amended—

(1) in subparagraph (B), by striking “subsections” and inserting “sections”; and

(2) by adding at the end the following:

“(C) STUDY OF ADDITIONAL COMPONENTS.—Not later than 3 complete fiscal years after the date of enactment of this subparagraph, the Secretary of the Interior shall submit to Congress a study regarding the feasibility and suitability of designating, as additional components of the Trail of Tears National Historic Trail, the following routes and land components by which the Cherokee Nation was removed to Oklahoma:

“(i) The Bengé and Bell routes.

“(ii) The land components of the designated water routes in Alabama, Arkansas, Oklahoma, and Tennessee.

“(iii) The routes from the collection forts in Alabama, Georgia, North Carolina, and Tennessee to the emigration depots.

“(iv) Related campgrounds located along those routes and in those land components.”.

PURPOSE OF THE MEASURE

The purpose of S. 1970, as ordered reported, is to amend the National Trails System Act to update the feasibility study for the Trail of Tears National Historic Trail.

BACKGROUND AND NEED

S. 1970 authorizes a feasibility study to evaluate whether certain sites recently identified by scholars and local trail enthusiasts are suitable for inclusion in the Trail of Tears National Historic Trail (Trail).

The Trail commemorates the forcible removal of more than 16,000 Cherokee, black slaves, and other tribes from their homelands (in northwest Georgia and adjacent Tennessee, Alabama, and North Carolina) to the Indian Territory (present-day Oklahoma) in 1838 and 1839. The impact to the Cherokee and other travelers was devastating. Hundreds of Cherokee died during their trip west, and thousands more perished from the consequences of relocation.

In 1987, when Congress authorized the Trail, it consisted of the primary land route and primary water route used by many of the Cherokee. Although the original feasibility study recognized that other sites and routes existed, at that time there was not enough evidence to locate and confirm them.

In the years since 1987, scholars and trail enthusiasts have amassed a significant amount of information that have helped to identify these additional routes and sites, and even new components of the two designated routes.

New routes include (1) the Bell Route traveled by John Bell’s Treaty Party across Tennessee and Arkansas to Ft. Gibson, Indian Territory; and (2) the Bengé Route, used by Cherokee leader John Bengé’s detachment. Bengé’s Route started in Ft. Payne, Alabama and traversed Tennessee, Kentucky, Missouri, and northern Arkansas, before arriving in Oklahoma.

Recent research has also identified the following sites: (1) land sites along a water route (known as the Water Route) that traveled the Tennessee, Ohio, Mississippi, and Arkansas Rivers through Tennessee, Alabama, Arkansas, and Oklahoma; (2) routes from collection and internment forts in Alabama, Georgia, North Carolina, and Tennessee to emigration depots; and (3) campgrounds along those routes.

LEGISLATIVE HISTORY

S. 1970 was introduced by Senators Coburn, Frist, and Alexander on November 7, 2005. The Subcommittee on National Parks held a hearing on S. 1970 on February 16, 2006. At its business meeting on March 8, 2006, the Committee on Energy and Natural Resources ordered S. 1970 favorably reported as amended.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on March 8, 2006, by unanimous voice vote of a quorum present, recommends that the Senate pass S. 1970, if amended as described herein.

COMMITTEE AMENDMENT

During consideration of S. 1970, the Committee adopted an amendment in the nature of a substitute. The substitute strikes authority given to the Secretary to designate trail additions after the suitability study is completed and instead requires that she report the results to Congress within three years of the date the bill is enacted into law. The amendment also deleted any reference to appropriations.

SECTION-BY-SECTION ANALYSIS

Section 1 amends section 5(a)(16) of the National Trail System Act (which designates the Trail of Tears National Historic Trail) to add a new subparagraph, (C).

Subparagraph (C) requires the Secretary of the Interior to submit to Congress a study of the feasibility and suitability of additions to the trail within three years of the enactment of the bill.

S. 1970 does not specify an amount to be appropriated.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the report is available, the Chairman will request it to be printed in the Congressional Record for the advice of the Senate.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1970. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 1970, as ordered reported.

EXECUTIVE COMMUNICATIONS

The views of the Administration on S. 1970 were included in testimony received by the Committee at a hearing on the bill on February 16, 2006. This testimony follows:

STATEMENT OF JOHN PARSONS, ASSOCIATE REGIONAL DIRECTOR,
NATIONAL CAPITAL REGION, NATIONAL PARK SERVICE,
DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the subcommittee, thank you for the opportunity to appear before you today to present the Department of the Interior's views on S. 1970. The bill would amend the National Trails System Act to update the feasibility and suitability study of the Trail of Tears National Historic Trail (NHT).

We thank Senators Tom Coburn, Bill Frist, and Lamar Alexander for their interest in and support of the commemoration of the Trail of Tears NHT. The Department supports updating the feasibility and suitability study for the Trail of Tears NHT; however, we recommend that S. 1970 be amended to remove the automatic designation of any additions to the original trail the study determines to be eligible. In a time of austere budgets and a refocusing on the core mission of the National Park Service (NPS), we believe that available funding should be first directed toward taking care of what we already own.

S. 1970 would update the feasibility and suitability study for the Trail of Tears NHT through the examination of additional routes, land components, and campgrounds associated with that trail not included in the initial study. The Secretary of the Interior would determine if some or all of these components are eligible additions to the trail at the completion of the study. Further, it would authorize the Secretary to make designations of any of these additional routes, land components and campgrounds that she found eligible. The National Trails System Act does not provide for additions to trails subsequent to their designation by Congress.

A network of 24 scenic and historic trails has been created since the enactment of the National Trails System Act in 1968. These trails provide for outdoor recreation needs, providing enjoyment and appreciation, which in turn, promotes good health and well-being. They traverse resources that connect us to history and provide an important opportunity for local communities to become involved in a national effort by encouraging public access and citizen involvement.

In 1987, Congress designated the Trail of Tears National Historic Trail. The trail encompassed the primary water route and northern land route used during the forced removal of the Cherokee Nation from its homelands in the southeast to Indian Territory (present day Oklahoma). The trail is administered by the NPS.

The Indian Removal Act of 1830 mandated the removal of all Indian tribes from east of the Mississippi River to lands west of Arkansas and Missouri. Of the Five Civilized Tribes, the Cherokee were perhaps the most successful at resisting the Act's implementation. But their fate was sealed in 1838 when the U.S. government was determined to complete the Removal. The roundup began in May, as

thousands of Cherokee families were brought by force to nearby military forts or camps, and subsequently marched to the principal emigration depots at Ross's Landing or Fort Cass in Tennessee, or Fort Payne in Alabama. From there, they either walked overland or rode river steamboats, flatboats, and keelboats to Indian Territory. By the spring of 1839, nearly the entire Cherokee Nation, comprising some 16,000 individuals from all levels of society, had been removed west.

The 1992 Comprehensive Management and Use Plan for the Trail of Tears NHT identified the need to study two additional major routes of Cherokee Removal, the Bell and Bengé Routes in the states of Tennessee, Alabama, Missouri, Arkansas, and Oklahoma as possible additions to the existing trail. Both of these routes are included in S. 1970. Subsequently, the Cherokee Nation, the Eastern Band of Cherokee Indians, the Trail of Tears Association, and other trail supporters have urged the NPS to include additional important routes of Cherokee Removal in Georgia, North Carolina, Alabama, Tennessee, and Oklahoma. These routes lead from the many removal forts established by the military during the roundup of the Cherokee to the major embarkation sites from which the Cherokee people left on their tragic journey to Indian Territory. The roundup of the Cherokee is a major part of the story of the Trail of Tears, and it is not adequately represented by the current trail.

The Department recognizes the importance of telling the complete story of the Trail of Tears. Updating the feasibility and suitability study would cost approximately \$175,000. Also, the NPS estimates that it would require an additional \$295,000 per year to adequately provide funding for staff, travel, supplies, and other costs to administer the new routes.

Historic trails cross public and private lands, and the intent of the National Trails System Act is one of respecting private property rights. In so doing, the development of strong partnerships is critical to administering and managing the historic trails and achieving preservation of trail resources and interpretation of the trail to the public. The Trail of Tears NHT demonstrates the results of this type of effort.

Mr. Chairman, thank you for the opportunity to comment. This concludes my prepared remarks and I will be happy to answer any questions you or other committee members might have.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 1970, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Public Law 90-543—Oct. 2, 1968

AN ACT To establish a national trails system, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the “National Trails System Act”.

* * * * *

NATIONAL SCENIC AND NATIONAL HISTORICAL TRAILS

SEC. 5. (a) National scenic and national historic trails shall be authorized and designated only by Act of Congress. There are hereby established the following National Scenic and National Historic Trails:

* * * * *

(16)(A) The Trail of Tears National Historic Trail, a trail consisting of water routes and overland routes traveled by the Cherokee Nation during its removal from ancestral lands in the East to Oklahoma during 1838 and 1839, generally located within the corridor described through portions of Georgia, North Carolina, Alabama, Tennessee, Kentucky, Illinois, Missouri, Arkansas, and Oklahoma in the final report of the Secretary of the Interior prepared pursuant to subsection (b) of this section entitled “Trail of Tears” and dated June 1986. Maps depicting the corridor shall be on file and available for public inspection in the Office of the National Park Service, Department of the Interior. The trail shall be administered by the Secretary of the Interior. No lands or interests therein outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for the Trail of Tears except with the consent of the owner thereof.

(B) In carrying out his responsibilities pursuant to [subsections] sections 5(f) and 7(c) of this Act, the Secretary of the Interior shall give careful consideration to the establishment of appropriate interpretive sites for the Trail of Tears in the vicinity of Hopkinsville, Kentucky, Fort Smith, Arkansas, Trail of Tears State Park, Missouri, and Tahlequah, Oklahoma.

(C) *STUDY OF ADDITIONAL COMPONENTS.*—*Not later than 3 complete fiscal years after the date of enactment of this subparagraph, the Secretary of the Interior shall submit to Congress a study regarding the feasibility and suitability of designating, as additional components of the Trail of Tears National Historic Trail, the following routes and land components by which the Cherokee Nation was removed to Oklahoma:*

- (i) *The Benge and Bell routes.*
- (ii) *The land components of the designated water routes in Alabama, Arkansas, Oklahoma, and Tennessee.*
- (iii) *The routes from the collection forts in Alabama, Georgia, North Carolina, and Tennessee to the emigration depots.*

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*(iv) Related campgrounds located along those routes
and in those land components.*

